

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
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	)	
Implementation of the Telecommunication Act	)	CC Docket No. 96-150
of 1996: Accounting Safeguards Under the	)	
Telecommunications Act of 1996	)	
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**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

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**I. INTRODUCTION AND SUMMARY**

After almost a year of intense scrutiny by independent auditors and by a Joint Oversight Team (JOT) consisting of the FCC and 13 state commissions, SBC's audit report demonstrates that SBC has complied with section 272 rules. This result is neither unexpected nor remarkable. As this Commission is well aware, SBC has dedicated enormous resources to section 272 compliance. SBC instituted in 1997, a section 272 Oversight Team, that not only provides comprehensive section 272 training and information to employees but also advises SBC affiliates on the section 272 rules on a constant basis. The audit report is a testament to SBC's meticulous attention to section 272 requirements — requirements that emanated from numerous different proceedings and, because of their novelty, were often difficult to interpret, let alone implement.

SBC's competitors, particularly AT&T, have made every attempt to discredit these results and, finding nothing substantive, have attempted to discredit the audit procedures themselves. These arguments are frivolous and should be rejected. The procedures in this biennial audit were, if anything, more extensive and subject to more rigorous oversight than most audits. As this Commission is well aware, the biennial audit was an "Agreed Upon Procedures" (AUP) audit as opposed to a regular "attestation" audit. One of the main features of the AUP audit was that federal and state regulators, through a JOT, participated in the development of the audit procedures, approved the final audit program, provided extensive oversight during the

audit, reviewed the auditors' workpapers, and identified their concerns and issues for further review before the audit report was submitted to this Commission. As a result of this extensive oversight, the independent auditors spent more than 5,000 billable hours to perform almost 69 individual procedures, the majority of which included multiple steps and sub-procedures to determine SBC's compliance with section 272.<sup>1</sup>

Moreover, these procedures were developed after notice and comment from the public, and SBC's competitors had ample opportunity to express their views on the audit format and procedures, which they did.<sup>2</sup> SBC's competitors' attempts to discredit the audit results based on lack of procedures is truly a recognition of the fact that the audit results themselves are unassailable.

The audit results overwhelmingly support the conclusion that SBC is in material compliance with the section 272 rules. They demonstrate that the SBC BOCs and SBC's section 272 affiliate operated independently, maintained separate books and accounts, maintained separate officers, directors, and employees, and conducted transactions on an arms length basis. Further, they show that the SBC BOCs did not discriminate in favor of the section 272 affiliates in the provision of goods or services.

## **II. THE AUDIT RESULTS CONFIRM THAT SBC HAS COMPLIED WITH SECTION 272 RULES**

### **A. SBC's Section 272 Affiliates Were Structurally Separate from the BOCs**

Section 272(b) sets forth certain structural and transactional requirements to ensure that the section 272 affiliate remains separate from the BOCs. It requires, *inter alia*, that the section 272 affiliate has separate officers, directors and employees, maintain separate books, records and accounts, and does not have recourse to the BOC's assets for obtaining credit. Further, the

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<sup>1</sup> Not only did the audit include Southwestern Bell Communications Services Inc., SBC's section 272 affiliate that provided interLATA long distance services in the region where SBC had obtained section 271 authority, but the audit also included Ameritech Communications Inc. (ACI), SBC's section 272 affiliate in the Ameritech states where SBC did not have section 271 authority.

<sup>2</sup> See Proposed Model for Preliminary Biennial Audit Requirements, 12 FCC Rcd 13132 (1997).

section 272 affiliate must “operate independently” of the BOC, i.e., the section 272 affiliate and the BOC cannot jointly own switching and transmission facilities and they cannot perform operating, installation, and maintenance (OI&M) functions for each other’s facilities.<sup>3</sup>

To determine SBC’s compliance with these rules, the auditors performed comprehensive procedures involving multiple detailed steps. They inspected the corporate records and organizational and functional charts of the SBC BOCs and section 272 affiliates and noted that the section 272 affiliates were established as corporations separate from the BOCs.<sup>4</sup> They compared the list of officers and directors of the section 272 affiliates, and noted that no officers or directors simultaneously served on both boards of directors. The auditors also noted that there were no departments of the section 272 affiliates reporting either functionally or administratively (directly or indirectly) to an officer of an SBC BOC. Further, the auditors reviewed SBC’s detailed policies and procedures regarding sharing and loaning of employees and the numerous manual and automated internal controls, including built in payroll systems controls that SBC had instituted to detect and prevent any overlap of officers, directors and employees.<sup>5</sup> Their findings demonstrate that the officers, directors, and employees of SBC’s section 272 affiliate were indeed separate from those of the BOC.

In addition, the auditors verified that the books, records and accounts of the section 272 affiliates were maintained separately from those of the BOCs. They reviewed several general ledgers of the section 272 affiliates and found no link between those and the ledgers maintained by the BOCs. They also conducted an extensive review of the accounting procedures used by the section 272 affiliates which included a review of accounting systems, processes, transaction flows, control points affecting revenue, accounts receivable, cash receipts, purchasing, cash

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<sup>3</sup> *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905 at ¶158 (1996) (*Non-Accounting Safeguards Order*).

<sup>4</sup> Report of Independent Accountants on Applying Agreed Upon Procedures for SBC Communications, Inc., Public Version (Redacted) (Dec. 17, 2001) App A, page 1. (*Section 272 Audit Report*).

<sup>5</sup> *Section 272 Audit Report*, App. A, pages 5-9.

disbursements, payroll, and recording of affiliate transactions. Once again, they found no instances of noncompliance.<sup>6</sup>

Additionally, the auditors obtained a sample of transactions by the section 272 affiliate and verified that the transactions were funded by, and appropriately reflected in the general ledger of each section 272 affiliate by tracing these transactions to the section 272 affiliate's general ledger "without exception."<sup>7</sup> They also obtained each section 272 affiliate's financial statements and a listing of all lease agreements and noted that the leases selected for testing were "appropriately recorded" in the books of the section 272 affiliates in accordance with generally accepted accounting principles.<sup>8</sup>

The auditors also confirmed that the section 272 affiliates had no arrangements that would permit a creditor to have recourse to the assets of the BOCs. They inspected the section 272 affiliates' lease agreements and obtained positive written confirmation from a number of lessors that they had no recourse, either directly or indirectly, to the assets of any of the BOCs. They further documented in the workpapers that the section 272 affiliates had no credit arrangements with unaffiliated lenders and major suppliers of goods and services during the audit period.<sup>9</sup>

To determine SBC's compliance with the prohibition on joint ownership of switching and transmission facilities, the auditors obtained a detailed listing of all fixed assets of the section 272 affiliates, including capitalized software. They determined which assets related to transmission and switching facilities, and the land and buildings where those facilities are located by reviewing the descriptions on the listings and noting which general ledger account numbers included transmission and switching facilities. After reviewing a sample of 97 items they

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<sup>6</sup> *Section 272 Audit Report*, App. A, pages 3-5.

<sup>7</sup> *Section 272 Audit Report*, App. A, page 4.

<sup>8</sup> *Section 272 Audit Report*, App. A, page 5.

<sup>9</sup> *Section 272 Audit Report*, App. A, pages 9-10.

determined that none of those items was purchased jointly by the section 272 affiliates and a SBC BOC.<sup>10</sup>

Additionally, to verify if SBC was in compliance with the Commission's OI&M restrictions, the auditors obtained a list and description of the services rendered to the section 272 affiliates by the BOC, other affiliates, and by unaffiliated entities. After reviewing these lists the auditors determined that none of the section 272 affiliates obtained OI&M services for transmission and switching facilities from the SBC BOCs or any other affiliated entity.<sup>11</sup> Thus, the audit report, based on a comprehensive audit of SBC's records, substantiates that SBC is in material compliance with the structural and "operate independently" requirements of section 272(b).

**B. The SBC BOCs Conducted All Transactions With Its Section 272 Affiliates On An Arms Length Basis And Did Not Violate The Disclosure Requirements.**

Sections 272(b)(5) and (c)(2) require that the BOC and the section 272 affiliate conduct their transactions on an arm's length basis and the BOC account for all transactions with the section 272 affiliate according to approved accounting principles to prevent improper cost allocation.<sup>12</sup>

To determine SBC's compliance with the above requirements, the auditors performed a comprehensive review of SBC's corporate, financial and other records. They obtained and reviewed SBC's procedures for affiliate transactions to determine if the procedures complied with the FCC rules. After conducting a detailed comparison of the SBC written procedures with the FCC rules, the auditors determined that there were no substantial differences between the two. They also conducted an extensive review of SBC's internal policies for training employees,

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<sup>10</sup> *Section 272 Audit Report* , App. A, page 3.

<sup>11</sup> *Section 272 Audit Report* , App. A, page 2.

<sup>12</sup> 47 U.S.C. §§272(b)(5) and (c)(2).

informing employees of affiliate transactions and other 272 guidelines, and other procedures to ensure compliance with these guidelines. After interviewing employees from both the BOCs and the section 272 affiliates, the auditors determined that the employees were aware of the section 272 requirements and the affiliate transactions rules.<sup>13</sup> Thus, SBC's internal procedures to ensure dissemination of information about arm's length transactions were found effective.

The auditors also tested, based on agreements selected by the JOT, SBC's calculations of Fully Distributed Cost (FDC) and Fair Market Value (FMV) to ensure that affiliate transactions are priced according to the Commission's rules. As the auditors' findings demonstrate, SBC's cost calculations are fully compliant with FCC rules and orders.<sup>14</sup> Further, the auditors obtained a sample of bills for services provided by SBC BOCs to the section 272 affiliates and determined that the sampled amounts were priced at the higher of FDC or FMV, or Prevailing Market Price (PMP), according to the FCC's affiliate transactions valuation standards.<sup>15</sup> Similarly, with approval from the JOT, the auditors obtained another sample of bills for services provided by SBC's central services organizations to each section 272 affiliate, and noted that those services were also priced at FDC as documented in SBC's Cost Allocation Manual (CAM).<sup>16</sup>

Additionally, the auditors tested whether the SBC section 272 affiliates had made public and posted all transactions with the BOCs on the Internet, as required by section 272(b)(5). The auditors noted SBC's representation, that none of the section 272 affiliates obtained any services from SBC BOCs without a tariff or a written agreement.<sup>17</sup> Thus, all services the section 272

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<sup>13</sup> *Section 272 Audit Report*, App. A, pages 11-14.

<sup>14</sup> *Section 272 Audit Report*, App. A, pages 17-19.

<sup>15</sup> The auditors noted only one exception where services did not appear to be priced according to affiliate transaction rules. However, SBC explained that those rates were temporary and were subject to true up after SBC had completed its time and motion studies to determine the correct rate. (*Section 272 Audit Report*, App. A, page 20.).

<sup>16</sup> *Section 272 Audit Report*, App. A, page 22.

<sup>17</sup> *Section 272 Audit Report*, App. A, page 17.



affiliates had received from BOCs were documented and available to the public. The auditors also noted that of 450 agreements, all except 25 were posted on the Internet for public inspection.<sup>18</sup> For the agreements that were posted, the auditors noted that the information was sufficiently detailed so that competitors were well aware of the rates, terms, conditions, frequency, effective dates, termination dates, description of services, and methods of pricing that were offered to the section 272 affiliate.

ATT makes much of the fact that 25 of 450 agreements were not posted on the Internet for public inspection.<sup>19</sup> However, AT&T fails to explain how it was harmed by this lack of posting. The main purpose of the posting requirement is to ensure nondiscrimination by making competitors aware of goods and services provided by the BOC to its section 272 affiliate so they may request the same. In this case, most of the agreements not posted on the Internet were simply pricing addenda; the original agreements along with the terms and conditions were posted on the Internet on time.<sup>20</sup> Therefore, the lack of posting for most of these agreements did not discriminate against AT&T in any manner.

AT&T also complains that 17 other agreements were not available for public inspection.<sup>21</sup> That is incorrect. Although the auditors noted that 17 of the 450 agreements tested were not in SBC's Central Files, those agreements were posted on the Internet and were

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<sup>18</sup> Additionally, the auditors confirmed that of the 90 agreements they tested, only 3 were not posted in time. *Section 272 Audit Report*, App. A, page 16. Since the adoption of the FCC's posting requirements, the SBC section 272 affiliates have continued to improve the process and procedures used to post affiliate agreements in a timely and accurate fashion.

<sup>19</sup> AT&T Comments at 32.

<sup>20</sup> Further, many of these agreements related to discontinued services and SBC had no obligation to maintain them on the Internet. Still others related to joint marketing agreements which, pursuant to section 272(g), are not subject to nondiscrimination requirements. Thus, AT&T is complaining about a miniscule error, if any.

<sup>21</sup> AT&T Comments at 32.

available for public inspection.<sup>22</sup> Therefore, competitors like AT&T had ample access to information about the services provided by the BOC to the section 272 affiliates.<sup>23</sup>

Further, AT&T argues that SBC avoided its disclosure obligations for services obtained by the BOCs because it “created” shared services affiliates that appear to be performing functions previously performed by the BOC. AT&T then argues that SBC’s web site contains no affiliate transaction agreements between the shared services affiliates and the section 272 affiliates, thus resulting in SBC circumventing the disclosure rules. AT&T misstates the Commission rules on shared services. Its argument is misplaced for several reasons.

First, in its *Non-Accounting Safeguards Order*, the Commission specifically held – despite the objections of AT&T and WorldCom – that it would not preclude an affiliate of the BOC, such as a shared services affiliate, from performing functions for both the BOC and its section 272 affiliate.<sup>24</sup> The Commission found that sharing of services was essential to allow the BOCs to achieve the economies of scale and scope inherent in offering an array of services.<sup>25</sup> Thus, SBC was specifically permitted by this Commission to “create” shared services affiliates.

Second, the Commission clearly exempted the provision of shared services from the disclosure and nondiscrimination rules. While all “BOC” transactions to provide in house services to the section 272 affiliate are subject to the section 272(b)(5) and (c)(1) disclosure requirements, the provision of services by a shared services affiliate is not subject to those rules. In its *Accounting Safeguard Order*, the Commission further explained that transactions between the section 272 affiliate and a nonregulated affiliate such as a shared services affiliate, would

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<sup>22</sup> The posting of agreements in the Central Files is in addition to the Internet postings. Although SBC strives to keep its Central Files posting up to date, SBC notes only one unaffiliated carrier has ever inspected those files.

<sup>23</sup> As with the Central Files, very few unaffiliated carriers have inspected SBC’s website for this information and no one has requested the BOC to provide similar services.

<sup>24</sup> See, *Non-Accounting Safeguards Order*, at ¶182.

<sup>25</sup> *Id.*

only be subject to the affiliate transactions rules if they were “chain transactions,” i.e., if they ultimately resulted in an asset or service being provided to the BOC.<sup>26</sup>

Third, SBC did not “hide” any transactions in the audit. The auditors had a complete list of all services provided to SBC section 272 affiliates and it audited the services to determine if they involved “chaining.” The fact that this list was in the auditor workpapers instead of being attached to the audit report does not indicate that the transactions were not disclosed. It simply means that the list was retained as part of the audit workpapers as contemplated by SBC’s audit procedures. Indeed, attaching that list of services to the audit report would have served no useful purpose because a list of services alone cannot inform the public of whether there were any “chaining” transactions. Only the auditors could have used that information appropriately, which they did.

Thus, the above findings clearly demonstrate that the section 272 affiliates dealt with the SBC BOCs on an arms length basis and were in substantial compliance with the Commission’s accounting standards and disclosure rules.

**C. SBC BOCs Did Not Discriminate In Favor of The Long Distance Affiliates In The Provision of Goods, Services, Facilities, And Information.**

Section 272(c) states that a BOC may not discriminate in favor of its affiliate in the provision or procurement of goods, services, facilities and information and the establishment of standards. The auditor findings support the conclusion that the SBC BOCs carefully followed the mandate of section 272(c) and the Commission’s orders.

The auditors performed various tests and made numerous observations on nondiscrimination. They obtained and reviewed the SBC BOCs’ procurement guidelines, which include detailed instructions on SBC’s bidding processes, including the criteria used by SBC in

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<sup>26</sup> *Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket 96-150, *Report and Order*, 11 FCC Rcd 17539 at ¶183 (1996) (*Accounting Safeguards Order*).

selecting other carriers' products and services. The auditors noted that there were no purchasing preferences favoring the section 272 affiliates in any manner. Further, they noted that the SBC BOCs had not awarded any contracts to the section 272 affiliates during the audit period.<sup>27</sup>

Additionally, to determine whether the SBC BOCs had made the same services available to unaffiliated entities, the auditors obtained a list of all goods, services, facilities and information that were provided by the BOCs to the section 272 affiliates and noted that the provision of those services was disclosed on SBC's Internet website. Further, pursuant to the direction of the JOT, the auditors selected certain services provided to unaffiliated entities and compared the rates, terms, and conditions of the services. As is evident from the attachments to the audit report, all services were provided to unaffiliated carriers at the same rates, terms and conditions.<sup>28</sup> The few variations that existed were a result of differences in customer choices among the services received (for e.g., some rates were different because of different volume discounts or term lengths selected by carriers).<sup>29</sup>

Finally, at the direction of the JOT, the auditors visited SBC call centers, reviewed scripts and listened to sales representatives to determine if SBC BOCs complied with the "equal access" obligations as specified by the Commission in the *BellSouth South Carolina Section 271 Order*.<sup>30</sup> Their findings substantiate that, as required by the Commission, all customers receiving new services on inbound calls were informed that there are other providers of interLATA services

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<sup>27</sup> *Section 272 Audit Report*, App. A, pages 24-26.

<sup>28</sup> *Section 272 Audit Report*, Attachments A-5a and A-5b.

<sup>29</sup> *Section 272 Audit Report*, App. A, page 26. The auditors did note some minor billing inaccuracies by ACI, the Ameritech section 272 affiliate, but these were corrected in December 2000. SBC also notes that it has not yet gained section 271 long distance approval in Ameritech states and that the audit findings regarding ACI do not reflect on SBC's compliance with section 272 in the SWBT (Southwestern Bell Telephone Company) states where it has received section 271 relief.

<sup>30</sup> *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, *Memorandum Opinion and Order*, 13 FCC Rcd 539 at ¶¶ 321-233 (1997) (*BellSouth South Carolina 271Order*), *aff'd sub nom. BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C.Cir. 1998).

and, upon request, provided a list of such carriers in random order. Thus, after a thorough review of the BOCs procedures and practices the auditors' findings clearly substantiated SBC's compliance with the nondiscrimination safeguards of section 272(c).

**D. SBC BOCs Did Not Discriminate In Favor of The Long Distance Affiliates In The Provision of Access Services.**

Section 272(e) imposes additional nondiscrimination safeguards on BOCs. Specifically, it requires the BOCs to provide services, facilities, and information concerning exchange access to other entities on the same terms and conditions as to its own affiliates, to fulfill requests from unaffiliated entities within the same period in which it provides services to itself and its affiliates, to charge the affiliate or to impute an amount for access that is no less than the amount charged to unaffiliated carriers, and to ensure that costs for services and facilities provided to the section 272 affiliates are appropriately allocated.

As SBC demonstrated to the auditors, the SBC BOCs provide access services to interexchange carriers pursuant to generally available tariffs, thus ensuring that all carriers receive the same services on the same terms and conditions. Further, SBC uses the same processes and procedures for the provision of exchange access services to all entities - affiliated and unaffiliated, thereby ensuring nondiscrimination. To better serve its wholesale customers, SBC has established a separate wholesale organization (Industry Markets) that serves all interexchange carriers, including its section 272 affiliates. The Industry Markets organization provides each interexchange carrier (IXC) with separate "Account Teams" dedicated to serving that specific IXC. Moreover, all service orders for IXCs are handled in the same manner. All entities, affiliated and unaffiliated, order access services by submitting an Access Service Request (ASR). Once an ASR is submitted, the order is processed and provisioned using the same systems and in the same manner for all entities. Further, SBC's customer billing is also driven by the same order processing systems, thereby ensuring nondiscrimination through the

entire process. Thus, SBC's processes for fulfilling requests from unaffiliated carriers are the same as those for affiliated entities.

Additionally, SBC tracks its performance for certain access services<sup>31</sup> in the following areas: (1) successful completion of orders according to desired due date; (2) time from the BOC promised due date to circuit being placed in service; (3) time to Firm Order Confirmation; (4) time from PIC Change request to implementation; (5) time to restore and trouble duration; (6) time to restore PIC after trouble incident; and (7) and mean time to clear network/average duration of trouble.<sup>32</sup> Reports showing the BOC's performance results for itself and its affiliates are available to unaffiliated entities upon request, thereby enabling them to compare their specific results to the results of the BOC.

The auditors obtained the detailed performance measurement data from SBC, determined how the data were tracked and maintained, and summarized some of the data in the audit report. A comparison of the audit data reveals that the BOC and the BOCs' affiliates had longer special access intervals in some months and shorter in others. However, AT&T selectively cites only to certain sub-measures and months in which non-affiliates had longer intervals and argues that this

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<sup>31</sup> SBC tracks and maintains data on the seven measures and based on the design that was outlined by the Commission in the *Non Accounting Safeguards Order*, Appendix C. These are also the measures and design that SBC committed to track in each of its section 271 applications, which have been approved by the Commission.

<sup>32</sup> AT&T and WorldCom have raised two main arguments against these measurements, both of which are irrelevant to this proceeding. First, AT&T and WorldCom argue that there are flaws in the design of the performance measurements and, in particular, that the performance reports should compare not just the BOC's performance for its affiliates and unaffiliated entities, but the BOC's performance for its retail customers, its affiliates, and unaffiliated entities. AT&T Comments at 21, WorldCom Comments at 1-3. Second, AT&T argues that this Commission should require BOCs to track data for additional measures previously recommended by the Joint Competitive Industry Group in the Special Access Performance Measures proceeding. AT&T Comments at 22-23. However, these policy arguments of AT&T and WorldCom have no place in an audit proceeding. The purpose of the section 272 biennial audit is to determine if the BOCs have complied with "this section and the regulations promulgated there under." 47 U.S.C. §272(d)(1). It does not give AT&T and WorldCom free rein to introduce new requirements into the section 272 process.

demonstrates discriminatory performance by SBC.<sup>33</sup> AT&T's argument is misplaced for several reasons.

First, the results of the performance data cannot be attributed to the behavior of the BOC alone. Customers may request due dates that are longer or shorter than the BOC's standard due dates, or may extend originally requested installation dates based on changes in their plans or capabilities. For instance, SBC's root cause analysis for the measurement related to customer desired due date reveals that non-affiliates requested due dates less than or equal to the standard due date interval about twice as often as affiliates.<sup>34</sup> Such differences in behavior can greatly skew the results of the measures. Therefore, the raw data alone do not indicate whether differences in performance data are attributable to the BOC's performance or to other customer-specific issues.

Second, there can be no meaningful comparison of affiliate and non-affiliate performance for the above measures because, as SBC explained in an earlier filing, the volumes of SBC affiliate orders for special access services are extremely low.<sup>35</sup> When volumes are low, the Commission has often stated that differences in performance have to be statistically significant for it to make a determination on discrimination. Thus, the Commission has stated:

“volumes may be so low as to render the performance data inconsistent and inconclusive. Performance data based on low volumes of orders or other transactions is not as reliable an

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<sup>33</sup> AT&T Comments at 18.

<sup>34</sup> SBC's standard intervals are clearly printed in the BOCs' tariffs; therefore, customers requesting shorter due dates are clearly aware that they have requested “expedited” services.

<sup>35</sup> AT&T complains that neither SBC nor the auditor explain why the volumes are low. AT&T Comments at 21. The answer is simple - the volumes for SBC's affiliates are low because they purchase far fewer facilities special access facilities than the major interexchange carriers. Further, the order volumes for affiliates are far lower than those of non-affiliates, because the number of SBC affiliates that purchase special access is very small compared to the entire universe of unaffiliated IXC, CLECs, ISPs, and CMRS providers who purchase special access facilities from the BOC. Thus, a comparison between measures that include SBC's BOC and affiliates in one category and facilities-based IXCs and CMRS providers like AT&T, Sprint and MCI in the other, is necessarily lop sided.

indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data is based on a low number of observations, small variations in performance may produce swings in the reported performance data.”<sup>36</sup>

Not only the Commission, but also AT&T has acknowledged the importance of statistical tests. In its Comments on the establishments of Performance Measure Reports to demonstrate compliance with section 251, AT&T stated:

The Commission is clearly right that mere reporting averages of performance measures alone, without further analysis, is not sufficient to determine whether ILECs have provided equal treatment to CLEC. Thus, the proposal to require the use of statistical tests is correct.<sup>37</sup>

Finally, even assuming *arguendo*, that the data are meaningful, they do not support claims of discrimination. Although AT&T has selected isolated measures to argue discrimination, even a cursory review of the measures will show that for many months and many measures, the reports show better performance for non-affiliates. For instance, a measure of the time from the BOC promised due date to the circuit being placed in service shows that SBC performed better for unaffiliated entities for DS1s and DS3s for all months included in the audit period. More importantly, for measures where the order volumes for BOC and BOC affiliates were comparable to those of non-affiliates, the data demonstrated that the SBC BOCs consistently provided better performance to the nonaffiliated entities. Thus, the two measures

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<sup>36</sup> *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, *Memorandum Opinion and Order*, 16 FCC Rcd 20719 at Appendix C, ¶11 (2001).

<sup>37</sup> AT&T Comments in *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (June 1, 1998) page 45.



for PIC change intervals demonstrate superior performance for non-affiliates for almost all the months during the audit period.<sup>38</sup>

Therefore, AT&T's protestations notwithstanding, the audit does not show any evidence of discriminatory treatment by the BOCs. To the contrary, the audit demonstrates SBC's compliance with section 272(e) nondiscrimination safeguards because it shows that the SBC BOCs provide all services to IXC's on an equal basis pursuant to generally available tariffs, have nondiscriminatory procedures in place for all IXC customers, and provide to all IXC's, upon request, performance measure reports that track the BOCs' performance for its affiliates and for unaffiliated entities.<sup>39</sup> Notably, SBC received no complaints from the IXC's alleging discriminatory performance under section 272 during the audit period.<sup>40</sup>

### **III. AT&T'S CRITICISMS OF THE AUDIT PROCEDURES ARE UNWARRANTED.**

As stated earlier, the lack of adverse findings in the Audit Report has caused AT&T to train its fire on the audit procedures themselves. AT&T's criticisms of the audit procedures and its request for enforcement are completely without merit and should be denied.

First, AT&T argues that audit procedures were inadequate and were not disclosed.<sup>41</sup> That is incorrect. The general audit procedures were developed pursuant to public notice and comment and AT&T had every opportunity to participate in the development of these proceedings.<sup>42</sup> In

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<sup>38</sup> This reference is to SBC's performance reports that measure the time from when a Primary Interexchange Carrier (PIC) informs the BOC of a customer's selection to implementation of that request, and the time it takes to restore the PIC to the customer after trouble incidents, respectively.

<sup>39</sup> Additionally, the auditors findings demonstrate SBC's compliance with other aspects of section 272(e) including its compliance the imputation of access charges. *Section 272 Audit Report*, App. A, pages 31-37.

<sup>40</sup> AT&T also argues that the Commission should reaudit and penalize SBC based on its criticisms of SBC's performance results and errors in Internet postings. AT&T Comments at 32. AT&T's argument should be summarily rejected. As discussed in detail above, neither the performance results nor the discrepancy in Internet postings demonstrate that SBC was not in material compliance with section 272 of the Act.

<sup>41</sup> AT&T Comments at 1-2.

<sup>42</sup> See Proposed Model for Preliminary Biennial Audit Requirements, 12 FCC Rcd 13132 (1997).

fact, these procedures were developed with participation from the entire industry including state regulatory commissions and independent auditors. For AT&T to argue that the procedures were not disclosed to AT&T is disingenuous.

Although the Commission did not obtain public comment before tailoring the General Standard Procedures to each specific BOC audit, that was not required by the law or by accounting standards. As SBC has explained earlier, this audit was conducted as an “Agreed Upon Procedures” audit, instead of a standard “attestation” audit. In an AUP audit, the specific procedures are developed, according to accounting standards, by the “specified parties” to the audit, i.e., SBC and the JOT. The fact that AT&T was not consulted before the General Standard Procedures were tailored to SBC’s specific audit, is completely consistent with how such audits are conducted.<sup>43</sup>

Further, AT&T’s argument that these procedures were inadequate is baseless. Because the Commission used an “Agreed Upon Procedures” audit, the procedures were subject to constant oversight and direction from the Joint Oversight Team, consisting of state regulators from all 13 SBC states.<sup>44</sup> More often than not, the JOT was involved in directing specific procedures and selecting judgmental samples for the audit. If anything, these procedures were more extensive and subject to greater oversight than a general compliance audit.

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<sup>43</sup> According to AICPA standards, in an AUP audit the “Specified Parties” agree on the procedures to be performed and take responsibility for the sufficiency of those procedures. The AICPA standards further state that “as a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, a practitioner’s report on such [AUP] engagement should clearly indicate that its use is restricted to those specified parties”. AICPA Statement on Standards For Attestation Engagements, 10 sections 2.07 and 2.04.

<sup>44</sup> The Texas PUC also criticizes the inadequacy of some of the procedures. Additionally, it complains about information that was “buried” in the workpapers. It also objects to the fact that some information was not attached to the report because the audit procedure only required the auditors to “obtain” the document, not to attach it to the audit report. TX PUC Comments at 5 and 13. This criticism is unwarranted. The Texas PUC staff was part of the JOT and had every opportunity to, and did indeed, participate in the development of procedures. It is standard procedure for audits to distinguish between documents that will be attached to the audit report and those that will be contained in the workpapers. Additionally, the JOT had ample opportunity to inspect the information in the workpapers.

AT&T also argues that the samples used in the audit were insufficient and complains that the audit failed to investigate numerous interaffiliate transactions. AT&T's allegations are absurd. As AT&T well knows, audits are always based on sampling techniques and the extent of the sampling involves a cost benefit analysis. In fact, the General Standard Procedures for the audit specifically contemplated that the JOT would determine samples taking into consideration the cost versus benefits to be derived. The samples selected for interaffiliate transactions were based on the sound judgment of auditors and all samples were approved by the JOT. Simply because the transactions audited revealed no wrong doing by SBC does not mean that the sample sizes were too small.<sup>45</sup>

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<sup>45</sup> AT&T also argues that SBC attempted to delay the biennial audit proceeding by requesting confidential treatment of information in the audit report. That is ludicrous. As AT&T is well aware, SBC's audit procedures specifically contemplated the redaction of confidential information from the audit report. Therefore, SBC, in good faith, permitted the inclusion of specific financial and other information in the audit report along with a timely request for proprietary treatment of the same. SBC even offered to provide this information to competitors subject to appropriate proprietary agreements. Although the FCC subsequently denied SBC's request for confidentiality, there is no doubt that SBC acted in good faith and according to the procedures contemplated in the audit. In fact, SBC notes that competitors who argued that they could not file meaningful comments without the redacted information have not filed any comments in this proceeding.

#### IV. CONCLUSION

SBC's audit report, which includes detailed findings on all aspects of SBC's section 272 compliance, proves beyond doubt that SBC is in material compliance with the section 272 requirements. The Commission should reject, as baseless, the criticisms of SBC's conduct and deny its competitors' requests for a reaudit or enforcement action.

Respectfully Submitted,

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April 15, 2003

**CERTIFICATE OF SERVICE**

I, Loretia Hill, do hereby certify that on this 15<sup>th</sup> day of April, a copy of the foregoing  
“Reply Comments” was served via facsimile and U.S. first class mail, postage paid to the parties  
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